



Billing Code 4310–55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R1-ES-2011-N235]

[10120-1112-0000-F2]

Endangered and Threatened Wildlife and Plants; Incidental Take Permit

Application; Habitat Conservation Plan and Associated Documents; Kaheawa

Pastures Wind Energy Generation Facility, Maui County, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the Fish and Wildlife Service, have received an application, under the Endangered Species Act of 1973, as amended (Act), from Kaheawa Wind Power I, LLC, for an amendment to incidental take permit (ITP) number TE118901-0 and the associated Kaheawa Pastures Wind Energy Generation Facility Habitat Conservation Plan (HCP). If approved, the ITP amendment would reduce the level of authorized incidental take of the endangered Hawaiian petrel (uau) and the threatened Newell's shearwater (ao) in the course of operating the Kaheawa Pastures Wind Energy Generation Facility (KWPI wind farm) for generating electricity on the island of Maui, Hawaii. We invite public comment

on the proposed amendment of the ITP, HCP, and associated documents.

DATES: To ensure consideration, please send your written comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may download a copy of the permit application, HCP, and associated documents on the Internet at <http://www.fws.gov/pacificislands/>. Alternatively, you may use one of the methods below to request hard copies or a CD-ROM of the documents. Please specify permit number TE118901-0 on all correspondence.

Submitting Comments: You may submit comments or requests for copies or more information by one of the following methods.

- *Email:* Dawn_Greenlee@fws.gov. Include “Permit Number TE118901-0” in the subject line of the message.
- *U.S. Mail:* Please address written comments to Loyal Mehrhoff, Project Leader, Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3-122, Honolulu, HI 96850.
- *In-Person Drop-off, Viewing, or Pickup:* Call Dawn Greenlee, Fish and Wildlife Biologist, at (808) 792-9400 to make an appointment to view or pick up draft documents, or drop-off comments during regular business hours at the above address.
- *Fax:* Loyal Mehrhoff, Project Leader, 808-792-9580, Attn.: Permit number TE118901-0.

FOR FURTHER INFORMATION CONTACT: Dawn Greenlee, Fish and Wildlife

Biologist, U.S. Fish and Wildlife Service, 808-792-9400 (phone);

Dawn_Greenlee@fws.gov (email, include “Permit Number TE118901-0” in the subject line of the message). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Introduction

Kaheawa Wind Power I, LLC (KWPI), a subsidiary of First Wind Energy LLC, has requested an amendment to their existing incidental take permit (ITP) number TE118901-0, and the associated Kaheawa Pastures Wind Energy Generation Facility Habitat Conservation Plan (HCP), under section 10(a)(1)(B) of the Act. If we approve the amendment, the ITP would reduce the level of authorized incidental take of the endangered Hawaiian petrel (uau, *Pterodroma sandwichensis*) and the threatened Newell’s shearwater (ao, *Puffinus auricularis newelli*) in the course of operating the Kaheawa Pastures Wind Energy Generation Facility (KWPI wind farm) for generating electricity on the island of Maui, Hawaii. Project-related permit-authorized take of the Hawaiian goose (nene, *Branta sandvicensis*) and the Hawaiian hoary bat (opeapea, *Lasiurus cinereus semotus*) would remain unchanged.

The take would be incidental to KWPI’s continued operation of the 20-turbine, 30-megawatt KWPI wind farm that generates electricity on Maui. The Service listed the Hawaiian petrel as endangered on March 11, 1967 (32 FR 4001); the Hawaiian goose as

endangered on March 11, 1967 (32 FR 4001); the Hawaiian hoary bat as endangered on October 13, 1970 (35 FR 16047); and the Newell's shearwater as threatened on September 25, 1975 (40 FR 44150).

The notice for the existing ITP was published in the **Federal Register** on October 4, 2005 (70 FR 57888), and the ITP was issued on January 30, 2006.

Background

Section 9 of the Act (16 U.S.C. 1531 et seq.) and our implementing Federal regulations in the Code of Federal Regulations (CFR) at 50 CFR 17 prohibit the “take” of fish or wildlife species listed as endangered or threatened. Take of listed fish or wildlife is defined under the Act as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct” (16 U.S.C. 1532). However, under limited circumstances, we issue permits to authorize incidental take—i.e., take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

Regulations governing incidental take permits for threatened and endangered species are at 50 CFR 17.32 and 17.22, respectively. In addition to meeting other criteria, an ITP must not jeopardize the continued existence of federally listed threatened or endangered species.

Applicant's Proposal

KWPI currently holds permit number TE118901-0, and now seeks an amendment

to this existing permit to reduce the permitted level of take for the Hawaiian petrel and the Newell's shearwater. The existing permit authorizes the applicant to take 40 Hawaiian petrels, 40 Newell's shearwaters, 60 Hawaiian geese, and 20 Hawaiian hoary bats incidental to operation of the KWPI wind farm. The amendment would reduce the permitted level of take to 30 Hawaiian petrels and 8 Newell's shearwaters, with no change to the permitted level of take for the Hawaiian goose and the Hawaiian hoary bat. The KWPI wind farm project is located on the island of Maui, Hawaii.

The requested amendment to permitted take levels is based on the results of monitoring the take of listed species during the first six seasons of operation of the KWPI wind farm project. Monitoring has detected two Hawaiian petrel carcasses, but no Newell's shearwater carcasses were detected at the wind farm site. Under the approved HCP, KWPI is required to mitigate for the take of the covered species by implementing predator control at nesting areas of the Hawaiian petrel, Newell's shearwater, and the Hawaiian goose on Maui, and by contributing to Hawaiian hoary bat research. No changes to the mitigation program under the KWPI HCP are being proposed. The HCP's mitigation for take of Hawaiian petrels and Newell's shearwaters is conducted based on observed levels of take. The KWPI project's mitigation plans are being implemented pursuant to the KWPI HCP. Pursuant to the adaptive management aspects of the KWPII HCP, the mitigation program for Hawaiian petrel and Newell's shearwater has been refined. Summaries of the KWPI project's seabird mitigation plans are outlined in the October 2011 Draft Seabird Mitigation Plan for KWPI and KWPII. The document outlines the applicant's plans to attract both seabird species to protected areas in west

Maui, and to develop, within five years, additional mitigation measures that would be implemented, if necessary, to offset project take. These additional mitigation measures include in-situ management of Newell's shearwater in west Maui, east Maui, Molokai, and Lanai, in-situ management of Hawaiian petrel colonies on the Haleakala Crater in east Maui, and additional social attraction projects for Newell's shearwater in east Maui, Molokai, and Lanai.

The application for a permit amendment includes KWPI's 2006 Kaheawa Pastures Wind Energy Generation Facility HCP, Implementing Agreement, Guarantee Agreement, a proposed amendment to the HCP, a proposed amendment to the Implementing Agreement, and the October 2011 Draft Seabird Mitigation Plan for KWPI and KWPII.

Our Preliminary Determination

The Service has made a preliminary determination that the Biological Opinion, Set of Findings, Environmental Assessment, and Finding of No Significant Impact, all of which were previously approved in support of issuance of the original incidental take permit, do not require revision, because there is no new information relating to the impacts of this action that warrant such a change, and there are no additional impacts expected beyond those originally assessed.

Next Steps

The public process for the proposed Federal permit action will be completed after

the public comment period, at which time we will evaluate the permit amendment application and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act, applicable regulations, and NEPA requirements. If we determine that those requirements are met, we will amend the ITP to reflect the revised HCP, Implementing Agreement, Guarantee Agreement, and the October 2011 Draft Seabird Mitigation Plan for KWPI and KWPII.

Public Comments

We invite public comment on the proposed amendments of the ITP, HCP, Implementing Agreement, and the October 2011 Draft Seabird Mitigation Plan for KWPI and KWPII. If you wish to comment on the proposed amendment of the ITP, HCP, and associated documents, you may submit comments by any one of the methods discussed above under **ADDRESSES**.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly

available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 et seq.) and NEPA regulations (40 CFR 1506.6).

Dated: ____November 8, 2011_____

**Richard R. Hannan,
Deputy Regional Director,
Pacific Region,
Portland, Oregon**

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